

AMENDED IN ASSEMBLY APRIL 10, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1883

Introduced by Assembly Member Skinner
*(Coauthors: Assembly Members Ammiano, Buchanan, Chesbro,
Gordon, and Ting)*

February 19, 2014

An act to amend Section 5898.28 of the Streets and Highways Code,
relating to public improvements.

LEGISLATIVE COUNSEL'S DIGEST

AB 1883, as amended, Skinner. Public improvements: contractual
~~assessments; delinquency; assessments.~~

Existing law, under the Improvement Act of 1911, authorizes the legislative body of a public agency to designate an area within which the public agency and property owners may enter into voluntary contractual assessments to finance certain public improvements. Existing law authorizes the public agency to advance its own funds to finance work to be repaid through the voluntary assessments, and to issue bonds in that regard. Existing law provides that assessments levied in this manner constitute a lien against the property on which the assessments are made, and, in the case of delinquency, provides for collection of assessments and associated interest and penalties, as specified.

This bill would authorize a public agency to transfer, as defined, its right, title, and interest in any voluntary contractual assessments ~~and in all rights to initiate and prosecute a foreclosure action resulting from a delinquency in those assessments, as specified,~~ if bonds have not been issued in that regard, *subject to an agreement identifying the specific period of time during which the transfer will be operative, not to exceed*

3 years. The bill would not authorize the transferee to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the voluntary contractual assessment, which action would remain the responsibility of the public agency. The bill would also not affect the senior lien status of a lien resulting from that delinquency.

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Energy efficiency, renewable energy, and water efficiency
4 upgrades to residential, commercial, industrial, and other
5 properties are integral to furthering the state's goals of reducing
6 greenhouse gas emissions, insulating the state from the impacts
7 of dwindling water resources, and helping Californians save
8 money.

9 (b) Not-for-profit entities and other third parties are increasingly
10 important partners with local governments in funding Property
11 Assessed Clean Energy (PACE) upgrades.

12 (c) The closing costs associated with bond issuance can make
13 PACE financing for small projects cost-prohibitive.

14 (d) By pooling small to medium size PACE projects into one
15 bond, the closing costs for each project can be drastically reduced.

16 (e) In order for a third party to pool projects, it is necessary to
17 enable local governments to assign the revenue from a PACE
18 assessment to an investor prior to the issuance of a bond.

19 (f) The right to foreclose on delinquent voluntary assessments,
20 and the senior lien status of those assessments, should remain with
21 the local government.

22 ~~SECTION 1.~~

23 SEC. 2. Section 5898.28 of the Streets and Highways Code is
24 amended to read:

25 5898.28. (a) A public agency may issue bonds pursuant to this
26 chapter, the principal and interest for which would be repaid by
27 voluntary contractual assessments. A public agency may advance
28 its own funds to finance work to be repaid through voluntary
29 contractual assessments, and may from time to time sell bonds to
30 reimburse itself for those advances. A public agency may enter

into a relationship with an underwriter or financial institution that would allow the sequential issuance of a series of bonds, each bond being issued as the need arose to finance work to be repaid through voluntary contractual assessments. The interest rate of each bond may be determined by an appropriate index, but shall be fixed at the time each bond is issued. Bond proceeds may be used to establish a reserve fund, and to pay for expenses incidental to the issuance and sale of the bonds. Division 10 (commencing with Section 8500) shall apply to any bonds issued pursuant to this section, insofar as that division is not in conflict with this chapter.

(b) (1) Notwithstanding any provision of this division or the Improvement Act of 1915 (Division 10 (commencing with Section 8500)), a public agency may transfer its right, title, and interest in and to ~~(1) any voluntary contractual assessments and (2) all rights to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the voluntary contractual~~ assessments, if bonds have not been issued pursuant to subdivision (a). *The public agency and the transferee shall enter into an agreement that, among other things, identifies the specific period of time during which the transfer of voluntary contractual assessments will be operative, not to exceed three years. Except as provided in paragraph (2), a transfer of any voluntary contractual assessments under this subdivision shall be treated as a true and absolute transfer of the asset so transferred for the period of the transfer and not as a pledge or grant of a security interest by the public agency for any borrowing. The characterization of the transfer of any of those assets as an absolute transfer by the public agency shall not be negated or adversely affected by the fact that only a portion of any voluntary contractual assessment is transferred, nor by any characterization of the transferee for purposes of accounting, taxation, or securities regulation, nor by any other factor whatsoever. As used in this section, "transfer" means sale, assignment, or other transfer.*

(2) *Nothing in this subdivision shall be construed to authorize the transferee to initiate and prosecute a foreclosure action resulting from a delinquency in the payment of the voluntary contractual assessment, and nothing in this subdivision shall affect the senior lien status of a lien resulting from that delinquency. Initiation and prosecution of a foreclosure action shall remain the responsibility of the public agency.*

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